

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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Weiskopf
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FILE: B-207149.2

DATE: November 29, 1982

MATTER OF: Science Information Services, Inc.

DIGEST:

1. There is no legal requirement that competition be based on specifications which state the work in such detail and with such background information as to completely eliminate the risks of preparing an offer. Therefore, GAO does not question an agency's decision not to disclose requested background information in a data processing services procurement where the protester does not allege that the RFP failed to provide an adequate basis for competition or that the agency treated offerors unequally.
2. An agency generally may permit offerors to waive the expiration of the offers' acceptance periods in a negotiated procurement and conduct discussions with only those offerors whose proposals were found technically acceptable, except where waiver would compromise the integrity of the competitive procurement process.
3. There is nothing unreasonable or inconsistent in the technical evaluation panel's giving the protester a high score for its Project Manager under a criterion concerning personnell's qualifications and giving the protester low scores under two criteria concerning the collective experience of the firm and all the personnel committed to the contract.
4. Assuming a technical evaluator scored the protester's offer unreasonably low under one of the listed evaluation subcriteria, the protester was not prejudiced since the total score still would have been unacceptably low even if the proposal received the highest possible score under the subcriterion.

5. Bias will not be attributed to procurement officials based on inference or supposition.

Science Information Systems, Inc. (SIS) protests the award of any contract under request for proposals (RFP) No. 210-81-8001-BK issued by the National Institute of Occupational Safety and Health (NIOSH), Department of Health and Human Services. The RFP sought offers to provide the input functions for the NIOSH Current Research File--a computerized file containing more than 8,000 records of ongoing research related to occupational safety and health. The input functions include the acquisition, review, coding, indexing and data entry of research projects. SIS, whose proposal NIOSH eliminated from the competitive range because it was technically unacceptable, raises three principal contentions:

1--NIOSH unfairly refused to disclose to SIS certain background information which had been made available to other firms through prior dealings with the agency, although none received the information during this acquisition;

2--because the acceptance period for all offers had lapsed before NIOSH initiated discussions with offerors whose offers were in the competitive range, NIOSH should have either canceled the RFP and resolicited or given all offerors, including those not in the competitive range, an opportunity to upgrade their proposals; and

3--NIOSH's technical evaluation panel unreasonably penalized SIS for being a new company.

We deny the protest.

I. NIOSH's refusal to disclose information

The information SIS sought was, according to the firm, background information concerning the Current Research File's relationship to other agencies, other similar systems, and publications. SIS contends that the information was requested "to define the parameters of the NIOSH

information system and allow us to make recommendations and suggestions for its improvement." SIS alleges that other potential offerors had such information through formal presentations by NIOSH technical personnel at professional society meetings, and through informal contacts during visits to NIOSH facilities.

The agency declined to divulge much of the information requested by SIS because the information pertained to past performance and the agency feared offerors would parrot the previous methodology of performing the Current Research File Work, whereas the agency was interested in obtaining innovative approaches. In this regard, the RFP allotted 40 of 100 technical evaluation points to "Understanding and Approach."

SIS does not allege that the RFP failed to provide an adequate basis for competition or that NIOSH unfairly disclosed the information to any other offeror, but only that the information would have helped SIS prepare its proposal. Assuming that any potential offerors enjoyed a competitive advantage as a result of various contacts with the procuring agency, the Government is not required to equalize the advantage unless it is the result of a preference or unfair action by the agency. See Honolulu Disposal Service, Inc.--Reconsideration, 60 Comp. Gen. 642 (1981), 81-2 CPD 126. We do not believe that any advantage accruing from prior contracts, visits to NIOSH facilities, or attendance at professional meetings addressed by Government personnel constitutes unfair Government action.

We therefore deny this aspect of the protest.

II. NIOSH's failure to resolicit or give all offerors an opportunity to upgrade proposals.

The protester contends that since the acceptance periods of all the offers had expired before the competition was concluded, the agency should have either canceled the RFP and resolicited, or given all offerors--including those outside the competitive range--an opportunity to revise their proposals. We find no legal merit to SIS's position.

Except where waiver would compromise the integrity of the competitive procurement process, an agency may permit a bidder or offeror to waive the expiration of its acceptance

period since the acceptance period merely is for the offeror's protection against price fluctuations and prolonged uncertainty concerning the allocation of its resources. See United Electric Motor Company, Inc., B-191996, September 18, 1978, '78-2 CPD 206. Permitting the extension or revival of offers does not, however, constitute the initiation of a new procurement. It simply affords the Government the opportunity to continue and complete the normal procurement process without a reduction in the number of offerors who, at the time the proposals otherwise would expire, are in competition for the award. Once the agency properly determines that the offer of any firm should be excluded from the group eligible for award, the offeror's participation in the competition effectively is ended. Therefore, while an agency must give all offerors in the competitive range an opportunity to upgrade their proposals if it extends such an opportunity to any offeror, the agency has no duty to extend the same opportunity to offerors whose offers were found technically unacceptable. See Jekyll Towing & Marine Services Corp., B-200313, July 23, 1981, 81-2 CPD 57.

Since NIOSH had determined SIS's proposal to be technically unacceptable, SIS suffered no prejudice from the agency's conducting discussions with those offerors whose proposals were found technically acceptable, notwithstanding the expiration of the offers' acceptance period.

As the protester points out, we have stated that a contracting officer may allow an offeror to waive the expiration of its proposal acceptance period so as to make an award "on the basis of the offer as submitted," whereas here the contemplated award is based on revised proposals and not on offers "as submitted." See, e.g., Data Technology Industries, Inc., B-197858, July 1, 1980, 80-2 CPD 2. Those decisions, however, simply concerned whether waiver in a particular circumstance would compromise the competitive procurement process. The quoted language was not intended to impose a precondition to waiver, but merely reflected our view that waiver would not compromise the process in cases where offerors uniformly were not permitted to revise their offers. Similarly, we believe that the process would not be compromised here where all offerors in the competitive range uniformly were provided an opportunity to revise their proposals.

III. Alleged unreasonable evaluation

The protester's complaint that the technical evaluation panel unreasonably evaluated SIS's technical proposal

and harbored a bias against SIS because it was a new business is based principally on alleged inconsistent evaluations under two subcriteria listed in the RFP. Although one was a subcriterion of the major factor "Qualifications of Personnel Committed to the Project" (worth 20 points of the 100 available) and the other a subcriterion of "Management Plan" (worth 40 points), both basically involved the offeror's qualifications and experience. The first subcriterion (12 points) provided as follows:

"The offeror must demonstrate the proposed Project Manager's knowledge of occupational health and safety research, life sciences, indexing, and experience in management.* * *

The Management Plan subcriterion (15 points) stated:

"Demonstration of previous experience in performing similar efforts requiring continuous activity in several related task areas, on-time delivery on a monthly basis, and successful experience in quality control of a complicated document-data processing effort."

While the evaluation panel, consisting of three members, gave SIS's proposal a high score for the Project Manager's qualifications, it gave SIS a low score under the Management Plan subcriterion. One evaluator (who gave SIS 3 of the 15 points available) commented:

"Experience shown for the company is vague and generalized even if the collective experience of the staff is used, because the company has only been in business since 1980; there is still spottiness in some areas and there is no word processing experience mentioned. The company president has data entry experience, which is similar, but surely he is not going to handle this phase of the work himself."

SIS argues that this result is inconsistent because the proposed Project Manager and SIS's president are the same person, and therefore the company should have received as good an evaluation under the Management Plan subcriterion as the Project Manager/president did for his own qualifications.

SIS also believes NIOSH's allegedly prejudicial attitude towards a new business is evident from the low score it received from the same evaluator under another Management Plan subcriterion (worth 5 points), requiring:

"Demonstration of immediate capability to pursue all aspects of the scope of work within 30 days after contract award, i.e., that fully experienced people will be committed to work on the project." (Emphasis added.)

The evaluator's comments expressed concern that the proposal did not demonstrate SIS could provide a sufficient number of experienced personnel to accomplish the contract's word processing requirements on time, beginning within 30 days after award. The evaluator also expressed doubt that SIS personnel, even if they received training, could gain adequate experience to begin to meet the contract requirement within 30 days. The evaluator gave SIS 2 of the 5 points available.

It is the contracting agency's function, not this Office's, to determine the relative merits of technical proposals, and the agency has considerable discretion in making that determination. We therefore will not question an agency's technical evaluation unless the protester shows the agency's judgment lacked a reasonable basis or its determination otherwise violated procurement statutes or regulations. Art Services and Publications, Incorporated, B-206523, June 16, 1982, 82-1 CPD 595.

We believe the protester has failed to make such a showing. There is nothing inconsistent between SIS's receiving a high score for the experience of its Project Manager (and president), and at the same time receiving low scores under either the Management Plan subcriterion concerning the firm's collective experience, or under the subcriterion requiring the offeror to demonstrate that fully experienced personnel would be committed to the project. Under both subcriteria the evaluator commented on the lack of word processing experience. We reviewed SIS's proposal and found no mention of word processing experience for any of SIS's staff aside from the firm's president. A chief purpose of the two Management Plan subcriteria obviously was to require the offeror to show it had and would commit sufficiently qualified personnel to accomplish the contract's tasks in the required time frame. We therefore believe this evaluator, who commented that the Project Manager surely would

not be doing all the data entry work himself, reasonably gave the protester low scores for both Management Plan subcriteria since SIS did not demonstrate it had such personnel in addition to the president. The fact that the protester disagrees with NIOSH's judgment does not invalidate it. See Art Services and Publications, Incorporated, supra.

We do note, however, that another evaluator gave SIS none of the 15 available points for the first Management Plan subcriterion (involving the demonstration of previous experience and on-time delivery) because SIS had "no previous corporate experience." (SIS does not comment on this score.) The subcriterion, however, does not expressly require the offeror to demonstrate corporate, as opposed to staff, experience, although such experience obviously bears a reasonable relationship to the subcriterion. Assuming that SIS should have received a higher score from that evaluator, we still have no basis to object to SIS's exclusion from the competitive range since the addition of any or all of the permissible points under the subcriterion would still have resulted in SIS receiving an unacceptably low total score. The record does not indicate that this evaluator otherwise unreasonably scored SIS's proposal; in fact, his total score was the highest of the three given to the proposal.

Regarding CIS's allegations that the evaluation panel was biased against it because it was a new business, we have repeatedly held that bias will not be attributed to procurement officials based on inference or supposition. We will deny a protest if there is no indication that bias affected the protester's competitive standing. Arts Services and Publications, Incorporated, supra. There is no showing here of bias; the protester merely alleges it and leaves us to infer bias from NIOSH's allegedly unreasonable evaluation. As discussed above, the evaluation was reasonable with the possible exception of one evaluator's score under one subcriterion, and in that case the score did not adversely affect SIS's competitive standing.

The protest is denied.

for 
Comptroller General
of the United States